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 2 WASHINGTON LIQUOR AND )  
 3 CANNABIS CONTROL BOARD, a )  
 4 Division of the State of )  
 5 Washington, and THE STATE OF )  
 6 WASHINGTON DEPARTMENT OF )  
 7 REVENUE, a division of the State )  
 8 of Washington, JOSHUA CHOATE )  
 9 and MICHAEL PELLICCIOTTI, )  
 10 Assistant Attorney Generals, )  
 11 Criminal Justice Division, )  
 12 JUDGES JOHN AND JANE DOE, )  
 13 1 THROUGH 10, who are now )  
 14 presiding or who will preside in )  
 15 the future against Plaintiffs )  
 16 ROBERT REGINALD COMENOUT )  
 17 SR., ROBERT REGINALD )  
 18 COMENOUT JR., MARLENE )  
 19 COMENOUT and LEE )  
 20 COMENOUT SR. in current cases )  
 21 in state courts now or future )  
 22 cases involving Plaintiffs' )  
 23 allotment activity of Plaintiffs or )  
 24 some of them for alleged failure to )  
 collect tax or obey state tax laws, )  
 on the basis that state jurisdiction )  
 is preempted by federal law; JOHN )  
 AND JANE DOES, 1-10, fictitious )  
 names of employees of the )  
 Washington State Liquor and )  
 Cannabis Board who participated )  
 in raids on Plaintiffs' allotment )  
 and property at 908/920 River )  
 Road, Puyallup, Washington, or )  
 who may participate in the future, )  
 Defendants. )

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 26 Plaintiffs, through counsel, complain and allege for relief against  
 27 Defendants as follows:  
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## I. BACKGROUND

The location of all activity alleged in this Complaint is Public Domain Allotment 130-1027, at 908/920 River Road, Puyallup, Washington, 98371. It is legally classified as Indian Country pursuant to 18 U.S.C. § 1151(c).

As early as 1743, the English and American courts have rejected state or colonial attempts to tax Indians. History proves that the Constitutional Convention approved James Madison's determination to commit the exclusive power over Indian affairs to the federal government.

Territorial Governor Isaac I. Stevens made six treaties with the Northwest Indians in 1854-5. They are:

Treaty of Medicine Creek, 10 Stat. 1132 (Dec. 26, 1854); Treaty of Point Elliot, 12 Stat. 927 (Jan. 22, 1855); Treaty of Point No Point, 12 Stat. 933 (Jan. 26 1855); Treaty of Neah Bay, 12 Stat. 939 (Jan. 31, 1855); Treaty with the Yakamas, 12 Stat. 951 (June 9, 1855); Treaty of Olympia, 12 Stat. 971 (July 1, 1855).

Affected Indians included the Quinault and Yakama Indians. The purpose of the treaties was to extinguish Indian titles. Even after the treaties, treaty Indians were hanged and their heads were cut off and sent to Olympia, "Where a price was to be paid." The intervening 160 years has improved the method. The state of Washington Liquor and Cannabis Control Board has updated the effort by raiding the Comenouts, keeping their money and property, and thereby obtaining rewards in the form of bonuses. The State has asserted jurisdiction in an attempt to force Plaintiffs to collect its cigarette taxes. It is undisputed that the State cannot tax the Indians nor

1 can it require the Indians to pay or collect tax on any sales of non cigarette  
2 tobacco products. The non Indian purchaser is the person who is supposed  
3 to pay the cigarette tax. The legal fiction that the consumer pays the tax is  
4 a practical unreality for the reason that minimum rolls of tax stamps cost  
5 \$30,000 and are supposed to be glued to individual packages by wholesalers.  
6 The federal law of transporting cigarettes cannot be civilly applied to Indians.  
7 18 U.S.C. § 2346(b)(1), (2). The effect is that a direct state tax burden is  
8 imposed on the Plaintiffs. Current law holds that Indians are not required  
9 to collect the cigarette tax. The State has gone onto the allotment to seize,  
10 arrest and take the Plaintiffs' personal property and money. Regardless of  
11 tax, this incursion on federal property is illegal.  
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15 The preemption analysis in Indian law cases is different from  
16 standards of preemption developed in other areas of the law. Each case  
17 "requires a particularized examination of the relevant state, federal and tribal  
18 interests." *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 176, 109  
19 S.Ct. 1698, 104 L.Ed.2d 209 (1989). Here, the interests are clear. Congress  
20 wanted to assimilate Indians into mainstream society. *Cohen's Handbook of*  
21 *Federal Indian Law*, § 16.03[2][a], page 1072 (Nell Jessup Newton ed. 2012).  
22 Congress did not want states to tax or regulate the allottee Indian until  
23 he/she was assimilated into mainstream society. When able to manage  
24 his/her affairs, the BIA removed the restrictions. 25 U.S.C. §§ 349, 465. The  
25 restrictions on allotment 130-1027 are still in place. The allotment is part  
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1 of the definition of Indian Country, 18 U.S.C. § 1151(c). *California v.*  
2 *Cabazon Band of Mission Indians*, 480 U.S. 202, 215 n. 17, 107 S.Ct. 1083,  
3 94 L.Ed.2d 244 (1987) observes “[T]he federal tradition of Indian immunity  
4 from state taxation is very strong and. . .the state interest in taxation is  
5 correspondingly weak.” Unsurprisingly, Washington State has been  
6 historically branded as an enemy of the Northwest Indians.  
7

8  
9 This Complaint seeks to put an end to the ravaging of the Comenouts  
10 who seek to accomplish what the federal government wanted them to  
11 accomplish; assimilation within mainstream society. This case seeks  
12 declarations and injunctions to establish exclusive federal jurisdiction that  
13 would eliminate the state as an enemy of the Plaintiffs.  
14

15 Congress has exclusive jurisdiction to govern Indian owner activity on  
16 Indian-owned restricted allotments. State and local taxation is prohibited.  
17 Federal statutes, state and federal constitutions and federal binding case law  
18 prohibit state employees or agents from issuing state search warrants to  
19 arrest Indian owners and other Indians working on allotments. This method,  
20 including seizures of goods and money, is beyond state court jurisdiction and  
21 must be enjoined by this Court by declaring federal preemption.  
22

### 23 **Rulings Requested**

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25 This Complaint seeks the following rulings, including Declaratory and  
26 Injunctive Relief.  
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1           1.     Confirming that the allotment is properly defined under 18  
2 U.S.C. § 1151(c).

3           2.     Declaring that Wash.Rev.Code § 64.20.030, attempting to  
4 eliminate federal restrictions, is void by federal obstacle preemption pursuant  
5 to 25 U.S.C. §§ 348, 349.

6           3.     A declaration that the state of Washington courts are without  
7 jurisdiction to issue search warrants to arrest Plaintiffs for alleged violations  
8 of Wash.Rev.Code, Ch. 82.24, or to seize cigarettes in possession of Plaintiffs  
9 on their allotted land, Public Domain Allotment No. 130-1027. *Ross v. Neff*,  
10 905 F.2d 1349, 1354 (10<sup>th</sup> Cir. 1990).

11           4.     Declaring that the state of Washington cigarette tax, Ch. 82.24,  
12 by virtue of Wash.Rev.Code § 82.24.900, when used to collect state cigarette  
13 tax from the Comenouts, is preempted by federal and state constitutions and  
14 federal law. Therefore, Plaintiffs, when engaged in business on the allotted  
15 land are not required to collect Washington State cigarette taxes from non  
16 Indian purchasers and are protected against arrest and seizure of their  
17 property.

18           5.     Declaring that Plaintiffs, as enrolled Indians, may possess  
19 commercial cigarette packages without Washington State cigarette tax  
20 stamps on them and that Plaintiffs may place their own stamps on the  
21 packages. WAC 458-20-186(b)(i).

22           6.     That Wash.Rev.Code § 82.24.250(1)(7)(b)(c) and (d); § 82.24.290  
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1 and WAC 458-20-186(502, 802 and 803) and WAC 458-20-192(9)(i)(ii) and  
2 (iii) are invalid or not applicable to Plaintiffs. These statutes and  
3 administrative regulations allow tax free and tax stamp free sales of  
4 cigarettes sold by military concessionaires, but apply notice and more  
5 onerous conditions to sales of cigarettes by Indians in Indian Country,  
6 thereby violating equal protection constitutional requirements and are void.  
7

8  
9 7. A declaration that the state of Washington has no authority to  
10 assign Assistant Attorney Generals Joshua Choate and Michael Pellicciotti  
11 to prosecute affected Plaintiffs for alleged state tax crimes on the allotment.  
12 The State attorneys have no jurisdiction to criminally charge Plaintiffs where  
13 the State lacks state jurisdiction.  
14

15 8. That *State v. Comenout*, 173 Wash.2d 235, 267 P.3d 355 (Wash.  
16 2011) and similar cases are wrongly decided on the issue of state jurisdiction  
17 of off-reservation Indian allotments; and especially Public Domain Allotment  
18 No. 130-1027. That the state cases are not binding on this Court, violate  
19 existing law and are superceded by prospective changes in the state law,  
20 Wash.Rev.Code §§ 37.12.160-180, and federal preemption of state cases  
21 involving enrolled Indians in Indian Country.  
22

23 9. That Defendants, state of Washington, its divisions Washington  
24 State Liquor and Cannabis Control Board and Department of Revenue, its  
25 named Defendants J. Mark Keller, Lee Boling and Boyd Goodpaster and any  
26 employee or agent of the state, or who now work in concert with the named  
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1 Defendants, cannot go upon Allotment No. 130-1027 to arrest or regulate  
2 Plaintiffs' convenience store activity. That the said Defendants have no  
3 jurisdiction to apply state laws including state tax laws to Plaintiffs' activity  
4 on the allotment.  
5

6 10. Edward A. Comenout Jr.'s estate is also seeking the market  
7 value of 376,852 packs of cigarettes seized by the Washington State Liquor  
8 Control Board on July 28, 2008. The Pierce County Case No. 14-2-09107-4  
9 is on appeal in Division II of the Washington State Court of Appeals, No.  
10 47883-8-II. Oral arguments took place on April 20, 2016. The case is  
11 awaiting decision. The estate seeks dismissal of the case for lack of  
12 jurisdiction and return of the property or its value.  
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15 11. Pursuant to the theory of cases like *United Keetoowah Band of*  
16 *Cherokee Indians v. State of Oklahoma*, 927 F.2d 1170, 1182 (10<sup>th</sup> Cir. 1991);  
17 *Crowe and Dunlevy v. Stidham*, 640 F.3d 1140, 1157 (10<sup>th</sup> Cir. 2011);  
18 *Boisclair v. Superior Court of San Diego County*, 801 P.2d 305, 315 (S.C. Cal.  
19 1990); *Foster v. State Dept. of Transportation*, 34 P.3d 1288, 1289 (Alaska  
20 2001); *Magnan v. Trammell*, 719 F.3d 1159 (10<sup>th</sup> Cir. 2013); and federal  
21 statutes 25 U.S.C. §§ 349, 348, 465; other sections of Chapter 9, Title 25  
22 U.S.Code apply federal laws governing allotments; and 18 U.S.C. 1151(c), a  
23 section adopted by the state cigarette tax law, Wash.Rev.Code § 82.24.010(6)  
24 an injunction is requested to prohibit state of Washington judges from  
25 proceeding on current existing cases and future cases against Plaintiffs for  
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1 activity carrying on at the convenience store business on the allotment.

2 12. Plaintiffs seek a declaration that they may live and work on the  
3 property in cooperation with city, county and state governments, but seek  
4 clarification that these governments lack jurisdiction over them on their land  
5 in the same or similar manner as these governments lack jurisdiction over  
6 the nearby Puyallup Indian Reservation, the U.S. military bases or U.S.  
7 national banks located in Pierce County, Washington.  
8

9 13. That the restrictions in the deed of the allotment owners have  
10 never been eliminated and are still intact until the Bureau of Indian Affairs  
11 certifies that Plaintiffs Robert R. Comenout Sr. and Edward Amos Comenout  
12 III are competent to handle their respective affairs. 25 U.S.C. §§ 348, 349,  
13 465.  
14

15 14. Plaintiffs seek a declaration to establish that the Spokane  
16 probate of Plaintiff Edward A. Comenout Jr. owns the buildings on the  
17 allotment and that the revenue from the building is free of any state tax by  
18 virtue of federal preemption.  
19

20 15. To obtain a declaration that since the laws of the state of  
21 Washington, Wash.Rev.Code §§ 69.51A.010, 030, 040, 043, 045, 060, 085,  
22 100, 260, 270, 296, 300; Ch. 69.52 and other such enactments now allow  
23 use and sale of cannabis in the state, the case of *California v. Cabazon Band*  
24 *of Mission Indians*, 480 U.S. 202, 210, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987)  
25 allows the sale of cannabis and hemp products as the public policy of the  
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1 state is to allow the activity. The Plaintiffs seek a declaration that the same  
2 conduct, as now allowed for cannabis commerce in the state, is allowable for  
3 Plaintiffs to carry on the same commerce at the allotment and is also beyond  
4 the state's taxing authority.  
5

6 16. To obtain additional declarations related to or adjunct to the  
7 above requests and to enter temporary or permanent injunctions, or both,  
8 prohibiting Defendants from the present or future enforcement of the issues  
9 determined by Declaratory Judgment.  
10

## 11 **II. JURISDICTION**

12 17. Co-Plaintiffs Robert Reginald Comenout Sr. and Edward Amos  
13 Comenout III have jurisdiction in this Court as allotment owners pursuant  
14 to 25 U.S.C. § 345 and 28 U.S.C. § 1353.  
15

16 18. The Estate of Edward Amos Comenout Jr. has property located  
17 in allotment buildings. Jurisdiction is conferred by the Estate's building  
18 ownership, pursuant to 28 U.S.C. § 1353, 25 U.S.C. § 345 and § 1331.  
19 *Forest County Potawatomi Community of Wisconsin v. Norquist*, 45 F.3d 1079  
20 (7<sup>th</sup> Cir. 1995), "It is beyond dispute that federal courts have jurisdiction over  
21 suits to enjoin state officials from interfering with federal rights." *Id.* at 1082  
22 (internal quotes omitted). 28 U.S.C. 1331 applies.  
23

24 19. The action is commenced and arises under the Constitution of  
25 the United States, Article 1, § 8, cl. 3; Article VI, cl. 2, the Fifth and Fourth  
26 Amendments and federal question jurisdiction under 28 U.S.C. § 1331. As  
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1 owners of fractional rights as allottees, granted by *Babbitt v. Youpee*, 519  
2 U.S. 234, 117 S.Ct. 727, 136 L.Ed.2d 696 (1997) to “not diminish the owner’s  
3 right to use or enjoy property during his lifetime.” *Id.* at 245. The presence  
4 of the employees and agents on the property is a federal common law  
5 trespass governed by federal law conferring jurisdiction under 25 U.S.C. §  
6 345. *Nahno-Lopez v. Houser*, 625 F.3d 1279, 1282 (10<sup>th</sup> Cir. 2010).

8  
9 20. Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201-2202.  
10 *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441 (1908); *Burlington Northern &*  
11 *Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1091 (9<sup>th</sup> Cir. 2007).

12 21. This case is commenced pursuant to U.S. Const. art. VI, cl. 2,  
13 wherein federal law can preempt state law and also the Equal Protection  
14 clause of the Fifth Amendment and the Indian Commerce Clause, Article 1,  
15 § 8, cl. 3. The court has jurisdiction pursuant to 28 U.S.C. §§ 1651, 1353  
16 and 1331. *United Keetoowah Band of Cherokee Indians v. State of Oklahoma*  
17 *ex rel Moss*, 927 F.2d 1170, 1179 (10<sup>th</sup> Cir. 1991); *Ex Parte Young*, 209 U.S.  
18 123 (1908); *State v. Gohl*, 477 N.W.2d 205, 206 (S.C.N.D. 1991); *Chick Kam*  
19 *Choo v. Exxon Corporation*, 486 U.S. 140, 151, 108 S.Ct. 1684, 100 L.Ed.2d  
20 127 (1988); *Shaw v. Delta Airlines*, 463 U.S. 85, 96 n. 14, 103 S.Ct. 2890, 77  
21 L.Ed.2d 490 (1983); *Armstrong v. Maple Leaf Apartments*, 508 F.2d 518, 523-  
22 4 (10<sup>th</sup> Cir. 1974); 28 U.S.C. § 2283, 26 U.S.C. § 1341; *Sycuan Band of*  
23 *Mission Indians v. Roache*, 54 F.3d 535, 541 (9<sup>th</sup> Cir. 1994). The Anti Tax  
24 Injunction Act does not apply for the reason that it is undisputed that  
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1 Indians are not liable for the state cigarette taxes. Only collection on sales  
2 to non Indians is disputed. *Moe v. Confederated Salish and Kootenai Tribes*  
3 *of Flathead Reservation*, 425 U.S. 463, 480, 96 S.Ct. 1634, 48 L.Ed. 96  
4 (1976); *Confederated Tribe of the Yakama Reservation v. Gregoire*, 658 F.3d  
5 1078, 1089 (9<sup>th</sup> Cir. 2011). *Direct Marketing Ass'n v. Brohl*, \_\_\_\_ U.S. \_\_\_\_,  
6 135 S.Ct. 1124, 1134, 191 L.Ed.2d 97 (2015) prohibits application of the Anti  
7 Tax Injunction Act to notice reporting or tax collection. The declaratory relief  
8 is sought by Plaintiffs, except Edward Amos Comenout III, to dismiss the  
9 ongoing state prosecutions. Edward Amos Comenout III seeks an injunction  
10 against future enforcement by the defendants of state tax laws against the  
11 Indian allotment owners.

12 22. In addition to Preliminary and Permanent Injunctions, Plaintiffs  
13 also seek a declaration to establish the extent, if any, of city of Puyallup,  
14 County of Pierce, state of Washington, Quinault Tribe, Bureau of Indian  
15 Affairs and Alcohol and Tobacco agencies have jurisdiction over Plaintiffs'  
16 occupancy and activity as American Indian owners on the site.

### 21 **III. VENUE**

22 23. Venue is proper in the Western District of Washington under 28  
23 U.S.C. § 1391(b) and (c) as some of the Defendants reside in Pierce County  
24 and the events occur and have incurred on the property located in Pierce  
25 County, Washington. The land is within the Western District. 28 U.S.C. §  
26 128(b).

**IV. PARTIES PLAINTIFF**

24. Co-Plaintiffs, Robert Reginald Comenout Sr. and Edward Amos Comenout III, are enrolled Indians, joint owners of the allotment, and residents of the state of Washington. They personally reside at the property location, 908½ River Road, Puyallup, Washington 98371. Their residence is within the Western District of Washington. Edward Amos Comenout Jr. also owned a single-wide trailer, licensed vehicles and other personal property located on the land. Edward Amos Comenout Jr. was domiciled and living on the property at the time of his death.

25. Another Co-Plaintiff is the Estate of Edward Amos Comenout Jr., Spokane County Superior Court, Washington, Case No. 10-4-01216-0. The Spokane County probate owns a majority interest in the permanent building on the allotment. The agent for service for said probate is Robert E. Kovacevich, 818 West Riverside Avenue, Suite 525, Spokane, Washington 99201-0995. Edward Amos Comenout Jr. died June 4, 2010. He was an enrolled Quinault Nation Indian.

26. Plaintiffs Robert Reginald Comenout Jr., Marlene Comenout and Lee A. Comenout Sr. are all enrolled Yakama Indians. They have been charged with alleged state tax violations for activities allegedly conducted on the allotment. They are presently contesting state jurisdiction in pending state cases. They seek dismissal and an injunction against Defendants for any similar future action. They also seek future relief to operate and work

1 in the store on the allotment exempt from state court jurisdiction or  
2 interference with their Indian commerce. Agents of the state of Washington  
3 raided the convenience store on the allotment and criminally charged Co-  
4 Plaintiff Robert Reginald Comenout Sr., Pierce County Washington Superior  
5 Court No. 15-1-02002-3, Co-Plaintiff Robert Reginald Comenout Jr., No. 15-  
6 1-01998-0, Co-Plaintiff Marlene Comenout, No. 15-1-02001-5, and Co-  
7 Plaintiff Lee A. Comenout Sr., No. 15-1-01999-8, with violating the state of  
8 Washington cigarette tax law. Marlene Comenout is the wife of Robert  
9 Reginald Comenout Jr. The others are children of Robert R. Comenout Sr.  
10 All four have entered Alford pleas in the case. They were sentenced on May  
11 13, 2016. The cases are on appeal filed May 25, 2016. Other persons were  
12 similarly charged, including Dennis Harris, who is a joint owner of the trust  
13 property.  
14

#### 15 **V. PARTIES DEFENDANT**

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18 27. Defendant Pierce County Superior Court, state of Washington,  
19 is the trial court that allowed the filing of criminal complaints against four  
20 Plaintiffs without territorial or personal jurisdiction. The court is named by  
21 Plaintiffs to obtain injunctive relief or both for present proceedings outlined  
22 above and potential subsequent proceedings.  
23

24  
25 28. Defendant state of Washington, through its division, is  
26 attempting to force state tax collection duties on Plaintiffs. It is named to  
27 obtain injunctive relief.  
28

1           29. Joshua Choate and Michael Pellicciotti are named only in their  
2 representative capacities as Assistant Attorney Generals of the state of  
3 Washington. No personal relief is sought against either person. The relief  
4 sought is to invalidate their representation against Plaintiffs in Pierce County  
5 Superior Court litigation. Plaintiffs do not allege that either person violated  
6 any attorney professional ethics rules of conduct. Their jurisdiction to act  
7 in place of the county attorneys in the case is questioned.  
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10           30. Boyd Goodpaster and Lee Boling are employees or loaned  
11 employees of the Washington State Liquor and Cannabis Control Board.  
12 They each personally investigated and coordinated prosecution of Plaintiffs  
13 beyond territorial and without personal jurisdiction over Plaintiffs. They are  
14 named at this time only in their official capacity, not personally.  
15

16           31. Officer J. Mark Keller has issued several affidavits against  
17 Plaintiffs as an agent on loan to the state of Washington. His affidavits have  
18 recited legal principles but have failed to give a correct statement of the  
19 application of the state cigarette tax law to Indians, thereby misleading  
20 courts to issue invalid search warrants. He is named in this case in his  
21 official capacity to afford him opportunity to debate jurisdiction of Indian  
22 Country and related issues sought by Plaintiffs' Declaratory judgment. At  
23 this time, he is not named personally.  
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26           32. The Washington State Superior Court or Appellate Judges John  
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1 and Jane Doe are fictitious names of the judge or judges that Plaintiffs are  
2 proceeding against to obtain temporary and permanent injunctions against  
3 adjudicating personal jurisdiction against them thereby preventing collection  
4 of state of Washington cigarette taxes. An injunction is also sought  
5 preventing territorial jurisdiction of the allotment when only Indian activity  
6 is involved. When names of the Judges are obtained, they will be named only  
7 in their representative capacity for injunctive purposes and not personally.  
8 John and Jane Does, 1-10, are fictitious names of employees or agents of the  
9 State of Washington Liquor and Cannabis Control Board who participated in  
10 raids on the Indian Country Store, 908/920 River Road, Puyallup,  
11 Washington. They will be named in their representative capacity and  
12 personally if the discovery in this case supports relief depending on the  
13 extent of their participation.  
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17 **Basic Legal and Factual Background Applicable to All Claims**

18 33. Plaintiff Robert R. Comenout Sr. is an enrolled Tulalip Indian.  
19 He is entitled to federal court jurisdiction pursuant to 25 U.S.C. §§ 345, 465  
20 to protect his right to the allotment. Plaintiff Edward Amos Comenout III is  
21 an enrolled Muckleshoot Indian. He is also entitled to federal court  
22 jurisdiction pursuant to 25 U.S.C. §§ 345, 465. These two Plaintiffs are not  
23 forced to comply with Wash.Rev.Code Ch. 82.24. The definition statute,  
24 Wash.Rev.Code § 82.24.010(6) incorporates 18 U.S.C. § 1151(c) to define  
25 Indian Country.  
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1           34. Edward Amos Comenout III lives on the land but has not worked  
2 or participated in the operation of the convenience store on the allotment.  
3 He has never been accused or charged in any way with any participation in  
4 the convenience store operation on the allotment.  
5

6           35. *Confederated Tribes and Bands of the Yakama Indian Nation v.*  
7 *Gregoire*, 658 F.3d 1078 (9th Cir. 2011) holds that the state of Washington  
8 cigarette tax law, as enacted in 1995 and still in force, does not require  
9 enrolled Indians selling cigarettes in Indian Country to comply with the state  
10 law. It is the Indian's "economic choice," *id.* at 1087. "The language also  
11 indicates that if an Indian retailer ever found itself facing a State collection  
12 effort for the retailer's non payment of the tax, the retailer would be shielded  
13 from civil or criminal liability." *Id.* at 1088.  
14

15           36. This case seeks a decision both a facial preemption challenge  
16 and an applied challenge. The applied challenge is allowable as Pierce  
17 County Superior Court Judge Jerome T. Costello, in the combined cases on  
18 criminal violations listed above, on March 28, 2016, ruled that the state  
19 court had jurisdiction of the Comenouts, holding that state law preempted  
20 federal law. The ruling by Judge Jerry T. Costello, Pierce County Superior  
21 Court, on the affected Plaintiffs' Motion to Dismiss was: "The Supreme Court  
22 has ruled that the cigarette tax law applies to the Comenouts and that this  
23 particular trust property is absolutely subject to Washington State law." The  
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1 Court applied state law to the facts and denied obstacle preemption. Both  
2 as applied and field preemption apply to grant injunctive relief. *Puente*  
3 *Arizona v. Arpaio*, \_\_\_ F.3d \_\_\_, 2016 WL 1730588 at \*4 (9<sup>th</sup> Cir. 2016). A law  
4 is field preempted where the regulatory framework is so pervasive that there  
5 is no room for state regulation. *U.S. v. Locke*, 529 U.S. 89, 116, 120 S.Ct.  
6 1135, 146 L.Ed.2d 69 (2000). The treaties, enabling acts and constitutions  
7 of the western states, have acknowledged congressional control over Indian  
8 lands and prohibit state jurisdiction to tax or regulate enrolled Indians'  
9 activity in Indian Country. See, e.g., *Warren Trading Post v. Arizona State Tax*  
10 *Commission*, 380 U.S. 685, 85 S.Ct. 1242, 14 L.Ed.2d 165 (1965), denying  
11 state tax legislation. *Id.* at 691, f. 18. The footnote states "Moreover, we hold  
12 that Indian traders trading on a reservation with reservation Indians are  
13 immune from a state tax like Arizona's, not simply because those activities  
14 take place on a reservation, but rather because Congress in the exercise of  
15 its power granted in Art. 1, s 8, has undertaken to regulate reservation  
16 trading in such a comprehensive (sic) way that there is no room for the  
17 States to legislate on the subject." The case in *Warren Trading* cited to  
18 sustain this statement is *Surplus Trading v. Cook*, 281 U.S. 647, 50 S.Ct.  
19 455, 74 L.Ed. 1091 (1930) that held state sales taxes on federal military  
20 bases were preempted by the Federal Constitution. The opinion states, "It  
21 is not unusual for the United States to own within a state lands which are  
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1 set apart and used for public purposes” *Id.* at 650. The opinion gives  
2 Indians reservations as an example and notes that state laws “can have only  
3 restricted application to the Indian wards.” *Id.* at 651. See also *Indian*  
4 *Country, U.S.A., Inc. v. State of Oklahoma ex rel. Oklahoma Tax Com’n*, 829  
5 F.2d 967, 976-981 (10<sup>th</sup> Cir. 1987).

7 37. A declaration is sought declaring that the state cigarette tax law,  
8 Wash.Rev.Code § 82.24.900, is not applicable if the federal law and state and  
9 federal constitutions prohibit the collection of tax by Plaintiffs as enrolled  
10 Indians. Wash.Rev.Code § 82.24.080(2) exempts Indians. Therefore, State  
11 courts have no jurisdiction of Plaintiffs’ allotment. See, e.g., *Dickson v.*  
12 *Carmen*, 270 F.2d 809 (9<sup>th</sup> Cir. 1959) and 165 F.Supp. 942, 946 (D.C. Cal.  
13 1950); *Magnan v. Trammell*, 719 F.3d 1159 (10<sup>th</sup> Cir. 2013); *U.S. v. Ramsey*,  
14 271 U.S. 467, 472, 46 S.Ct. 559, 70 L.Ed. 1039 (1926); *Solem v. Bartlett*, 465  
15 U.S. 463, 467, n. 8, 104 S.Ct. 1161, 79 L.Ed.2d 443 (1984); *Wesley v.*  
16 *Schneckloth*, 346 P.2d 658 (Wash. 1959); *State v. Condon*, 79 Wash. 97, 139  
17 P. 871 (Wash. 1914); *U.S. v. Stands*, 105 F.3d 1565, 1572 (8<sup>th</sup> Cir. 1997); *U.S.*  
18 *v. Sands*, 968 F.2d 1058, 1064 (10<sup>th</sup> Cir. 1992); *U.S. v. Jewett*, 438 F.2d 495,  
19 497 (8<sup>th</sup> Cir. 1971); *State v. Klindt*, 782 P.2d 401 (Okla. 1989).

23 38. On February 8, 1887, 24 Stat. 388, the United States Congress  
24 enacted the General Allotment Act. Its purpose was to lift reservation Indians  
25 out of poverty by dividing up reservations into specific allotments to be  
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1 occupied by individual Indians as a home. The European-American model  
2 was seen as the essential step. The model would provide both a home and  
3 subsistence farming. Section 5 of the Dawes Act provided that an Indian  
4 could select land. The land would be held in trust by the United States. "In  
5 trust for the sole benefit of the Indian to whom such allotment shall have  
6 been made." The Act of July 4, 1884, §1, 23 Stat. 76, created off reservation,  
7 public domain allotments not located on any Indian reservation. These  
8 allotments have the same status as tribal land. *Cohen's Handbook of Federal*  
9 *Indian Law*, § 16.03[2][e], page 1076 (Nell Jessup Newton ed. 2012). 25  
10 U.S.C. § 465 enabled the Bureau of Indian Affairs, in 1926, to purchase what  
11 was then three acres of land at 908/920 River Road, Puyallup, Washington,  
12 98371, for Edward A. Comenout Sr., an enrolled Quinault Indian, the father  
13 of Edward A. Comenout Jr. Edward Amos Comenout Sr. died in 1929 at age  
14 24. The land has been held as a restricted public domain allotment ever  
15 since its purchase in 1926. The site is not located on any Indian reservation,  
16 nor is it subject to any jurisdiction of any recognized Indian tribe. The  
17 Bureau of Indian Affairs has jurisdiction to govern the site. No government  
18 has furnished police protection or offers services that would justify tax  
19 imposition. They share plunder from raiding the Plaintiffs, but offer nothing  
20 in return. The surrounding non Indian landowners are friendly to Plaintiffs  
21 and mutually cooperate. The deed, Exhibit A attached, was restricted  
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1 against alienation or encumbrance. Filed with the deed, and also attached  
2 as Exhibit A, is a certificate from a BIA Superintendent telling all the world  
3 that the land was purchased from trust funds and "said real property being  
4 purchased for a home." Since purchased, the property has always been  
5 owned by Indian descendants of Edward A. Comenout and his then wife,  
6 Anna Comenout Harris. The only exception is Martina Garrison, a non  
7 Indian, who now owns a part life estate. Martina Garrison does not own a  
8 full 100% life estate as she was awarded the life estate by the Will of Edward  
9 Comenout Jr., who owned an approximate 56% interest. She also owns  
10 about a 5% interest inherited from her mother, Dorothy Harris, half sister of  
11 Edward A. Comenout Jr. This is the property now owned by joint tenants  
12 along with Plaintiffs Robert R. Comenout Sr. and Edward A. Comenout III.  
13 These two Plaintiffs live at the property and seek to continue the retail  
14 convenience store business on the property. The property has ten or more  
15 owners. Other probates of owners are in process. The exact ownership  
16 increases due to deaths of joint tenants whose interests go to the survivors.  
17 When the Indian has proven to the satisfaction of the BIA that an Indian  
18 allottee has satisfied that the "Indian allottee is capable of managing his or  
19 her own affairs, the restrictions can be removed." Until a patent is issued,  
20 the land is restricted "as to sale, (sic) incumbrance or taxation." 25 U.S.C.  
21 §§ 349, 465. "During the trust or restricted period, federal law protects  
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1 allotments against alienation, encumbrance and taxation without  
2 Congressional consent.”

3  
4 39. Allotments can descend to heirs. 25 U.S.C. §§ 248, 391.  
5 Approximately eleven million acres of allotments are still currently in  
6 existence. Allotted lands purchased with Indian trust funds remain non  
7 taxable as long as the restrictions remain in place. 25 U.S.C. § 335. *Board*  
8 *of County Commissioners of Creek County v. Seber*, 318 U.S. 705, 63 S.Ct.  
9 920, 87 L.Ed. 1094 (1943). The land will remain as Indian Country as long  
10 as Indians are owners. *Bates v. Clark*, 95 U.S. 204, 209, 5 Otto 204, 24  
11 L.Ed. 471 (1877).

12  
13 40. Allotments may be occupied by Indians not residing on an Indian  
14 reservation. 25 U.S.C. § 334. The incidence of state tax on Indians is a  
15 “question of federal law.” *Coeur D’Alene Tribe of Idaho v. Hammond*, 384 F.3d  
16 674, 682 (9<sup>th</sup> Cir. 2004). “Indian rights to a Congressional allotment are  
17 governed by federal - not state - law.” *Nahno-Lopez v. Houser*, 625 F.3d  
18 1279, 1282 (10<sup>th</sup> Cir. 2010). Since the state law of cigarette taxation by  
19 express statute, Wash.Rev.Code § 82.24.900, denies application if the tax is  
20 prohibited by federal law, the panoply of federal law becomes part of the facts  
21 set forth herein.

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24 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

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26 41. Co-Plaintiff Robert Reginald Comenout Sr. inherited undivided  
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1 interests in the land, by virtue of surviving Edward Comenout Sr.'s spouse  
2 and other family members. The land is named "Indian Country."

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4 42. 25 U.S.C. § 465 states unequivocally that "such lands or rights  
5 shall be exempt from State and local taxation." The control of Congress over  
6 Indian Country, whether subject to a restriction, whether "a trust allotment"  
7 or a "restricted allotment," is the same. "In practical effect, the control of  
8 Congress, until the expiration of the trust or the restricted period, is the  
9 same." *U.S. v. Ramsey*, 271 U.S. 467, 470-1, 46 S.Ct. 559, 70 L.Ed. 1039  
10 (1926). Any attempt to regulate an Indian owner's use of an allotment must  
11 be commenced in federal court. Lack of state jurisdiction by declaratory  
12 judgment is the remedy. *U.S. v. City of Tacoma, Wash.*, 332 F.3d 574, 580  
13 (9<sup>th</sup> Cir. 2003). The land has been reduced from about 3 acres to less than  
14 an acre, primarily due to the condemnation for River Road that adjoins the  
15 property. The road is four lanes in width with a high traffic count. It runs  
16 between the cities of Puyallup and Tacoma. The building is free standing and  
17 connects living quarters at one end with a walk-in convenience store at the  
18 other end. The living quarters have been modified to allow for wheelchair  
19 disabled persons occupancy. A large smokestack type sign, stating "Indian  
20 Country," has been erected on the property. It can easily be seen by  
21 automobiles traversing River Road.

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26 43. Co-Plaintiffs Robert Reginald Comenout Sr. and Edward Amos  
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1 Comenout III jointly own over 15% of the property. Co-Plaintiff Edward Amos  
2 Comenout III inherited his joint ownership in the land from his great uncle,  
3 Edward Amos Comenout Jr. Edward Amos Comenout Jr. died, unmarried,  
4 with no children, on June 4, 2010.

6 44. Edward Amos Comenout Jr. was the son of Edward Amos  
7 Comenout Sr. Edward Amos Comenout Jr. owned an approximate fifty-six  
8 percent (56%) interest in the land and also the permanent buildings located  
9 on the land. Edward Amos Comenout Jr. died testate, but did not name a  
10 personal representative. The United States Department of Interior, Office of  
11 Hearings and Appeals, probated the trust land, but not the permanent  
12 buildings, which are classified as personal property by the BIA, under  
13 Probate Number P000086947IP. The Department of Interior probate of  
14 Edward Amos Comenout Jr.'s estate did not appoint an administrator, but  
15 on December 31, 2012, the BIA probate judge distributed the land to the  
16 heirs of Edward Amos Comenout Jr. named in his will. Administrative Judge  
17 Thomas F. Gordon, who heard the probate case, did not probate and did not  
18 include any permanent structures located on the premises as part of the  
19 trust estate. The December 31, 2012, ORDER APPROVING WILL AND  
20 DECREE OF DISTRIBUTION of the BIA probate judge contained an  
21 explanation why the buildings were excluded. It states in its relevant part:

26 At hearing, testimony established that there is a store located  
27 on decedent's trust allotment 130-1027. The inventory provided

1 by BIA does not include any structures located on said  
2 allotment as a part of the decedent's Indian trust estate. "As a  
3 general rule the Department considers permanent  
4 improvements to be non-trust property, and OHA does not  
5 probate them." 76 FR 7500, 7501, February 10, 2011. It is  
6 herein observed, however, that the disposition of such  
7 permanent improvements by other tribunals of competent  
8 jurisdiction are governed by the provisions 43 C.F.R. § 30.236  
9 (76 FR 7500, 7507, February 10, 2011). Accordingly, this  
10 decision does not further address the ownership rights of any  
11 structures located on said allotment.

12 The cited regulation, 43 C.F.R. § 30.236(d), provides that the BIA  
13 probate judge not distribute "any non trust permanent improvement." The  
14 regulation, 43 C.F.R. § 30.236(d)(2), also states that a BIA judge "(2) Can  
15 approve a consolidation agreement under subpart F of this part that includes  
16 a covered permanent improvement." The reference is to 43 C.F.R. § 30.150  
17 allowing a settlement among interested parties if all are "advised as to all  
18 material facts;" that all parties "understand the effect of the agreement" and  
19 "It is in the best interest of the parties to settle." Accordingly, the BIA has no  
20 jurisdiction of the buildings on the land. The Defendants have applied to  
21 state courts for search warrants and have allegedly trespassed on the land  
22 in total defiance of 25 U.S.C. § 349 and *Confederated Tribes of Chehalis*  
23 *Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153 (9<sup>th</sup> Cir.  
24 2013), holding that the state law, Wash.Rev.Code § 84.04.080, was  
25 preempted and irrelevant. "Therefore, it is irrelevant whether permanent  
26 improvements constitute personal property under Washington law." *Id.* at  
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1 1158. The percentage ownership of the building is 56 or more percent. The  
2 Estate and Robert R. Comenout Sr. own together over a 2/3 interest in the  
3 buildings.  
4

5 45. Under current law, when personal property is located off  
6 reservation owned by a deceased Indian and the Indian courts have no  
7 jurisdiction or decline to probate the assets, state probate courts have  
8 jurisdiction. The probate commenced in Spokane County, Washington, is an  
9 ancillary administration of a foreign will. See, e.g., *In re Estate of Gopher*,  
10 310 P.3d 521, 523 (Mont. 2013); *In re Lynch's Estate*, 377 P.2d 199 (Ariz.  
11 1962). The probate in Spokane County, Washington, was commenced in  
12 Spokane County Superior Cause No. 10-4-01216-0 on September 22, 2010.  
13 The probate is an insolvent probate and is still pending. Presently, no  
14 administrator is appointed as successor. However, Robert E. Kovacevich was  
15 appointed Special Administrator on April 3, 2015, to act only on matters  
16 where the estate participates in litigation. He is presently serving as Special  
17 Administrator.  
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21 46. After Edward Amos Comenout Jr.'s death, the custom of  
22 traditional Indian elder rule passed from him to Co-Plaintiff Robert Reginald  
23 Comenout Sr. Indian elder rule custom and practice allows Robert Reginald  
24 Comenout Sr. to determine who resides or can do business on the property.  
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1 Presently, Robert Reginald Comenout Sr. is fulfilling the custodian and  
2 property management role on the property.

3  
4 **The State Courts have no jurisdiction over Plaintiffs right to live and  
make a living on the allotment.**

5 47. *State v. Comenout*, 267 P.3d 355 (Wash. 2011), holds that the  
6 state has criminal jurisdiction to prosecute the Comenouts for activity on the  
7 allotment. “Washington assumed full nonconsensual civil and criminal  
8 jurisdiction over all Indian country outside established Indian reservations.  
9 Allotted or trust lands are not excluded from full nonconsensual state  
10 jurisdiction unless they are ‘within an established Indian reservation’.” *Id.*  
11 at 408. This case is the opposite of *Magnan v. Trammell*, 719 F.3d 1159 (10<sup>th</sup>  
12 Cir. 2013), and other cases cited, holding there is no criminal jurisdiction of  
13 the state over alleged Indian crime on an off-reservation allotments. In  
14 *Magnan*, the Court released the defendant from state execution. “We  
15 conclude that the Tract, at the time of Magnan’s crimes, was Indian country  
16 and that exclusive jurisdiction over these crimes rests with the United  
17 States.” *Id.* at 1176. (Internal quotation marks omitted.) Both cases cited  
18 18 U.S.C. § 1151 that contains § 1151(c) “all Indian allotments” in the  
19 definition of Indian country. Exclusive federal jurisdiction over allotments  
20 is also restated at 25 U.S.C. § 349. Further, the land and rights are exempt  
21 from state and local taxation, 25 U.S.C. § 465. The Defendants have refused  
22 to acknowledge federal preemption as established by the 1974 case of *Makah*  
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1 *Indian Tribe v. Clallam County*, 73 Wash.2d 677, 440 P.2d 442 (1968), a case  
2 that established that enrolled Indians did not have to pay Washington  
3 personal property tax as Congress preempted the tax. Congress has control.  
4

5 The opinion by colorful writer, Justice Hale, states:

6 Congress neither having specifically provided for the taxation by  
7 the state or its subdivisions of personal property owned by a  
8 Makah Indian, nor having impliedly granted such power, the ad  
9 valorem personal property tax by Clallam County may not be  
10 imposed upon personal property which is continuously used,  
11 kept and maintained on the Makah Reservation by a Makah  
12 Indian. Of course, Indians who live here are citizens of the state  
13 and of the United States, with all of the rights, privileges and  
14 immunities that citizenship carries. But they have additional  
rights, privileges and immunities vouchsafed them by contracts  
with the United States, called treaties, and implementing federal  
legislation, not enjoyed by the descendants of the white settlers  
on whose behalf, in part, the United States negotiated and made  
treaties with the Indians' forebears.

15 Although the natural dignity of the American Indian as a person  
16 and a citizen, his valor as a warrior, and his contributions to  
17 this country, military and civil, cannot and ought not be denied,  
18 one wonders, as he reads the case law on Indian matters,  
19 whether the law has not conferred upon tribal Indians and their  
20 descendants what amounts to titles of nobility, with all that  
21 entails, in contravention of Article 1, § 9, of the United States  
22 Constitution prohibiting such titles. But this is a question  
beyond our jurisdiction. That the Makahs will, while receiving  
most of the benefits of taxpayers and citizenship, escape some  
of the correlative responsibility of citizenship as a problem for  
the Congress and the President to solve. Id. at 686-687.  
23 (Underlining supplied.)

24 *Miami Tribe Of Oklahoma v. U.S.*, 656 F.3d 1129, 1143 (10<sup>th</sup> Cir. 2011),  
25 requires a Congressional grant of jurisdiction.  
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**Federal preemption applies.**

48. The state of Washington has asserted State court jurisdiction to execute search warrants to seize goods from Plaintiffs' store for non payment of state cigarette tax. *Begay v. Roberts*, 807 P.2d 1111 (Ariz. 1991). Washington State cannot tax sales of non cigarette tobacco items. The state of Washington has agreed to a permanent injunction. See Exhibit B attached. Apart from alleged liability for state cigarette tax, no binding authority exists allowing state employees to enter onto the allotment and seize Indian goods. Even if the tax was payable, Plaintiffs seek a declaration that the state courts lack jurisdiction to issue state tax warrants and probable cause warrants to seize Indian goods in Indian Country.

49. The state courts have also refused to apply the Ninth Circuit case of *Confederated Tribes and Bands of the Yakama Indian Nation v. Gregoire*, 658 F.3d 1078 (9<sup>th</sup> Cir. 2011). The case holds that although the state law may apply, enrolled Indians living in Indian Country are not *required* to collect state of Washington cigarette taxes. *Id.* at 1078. The holding is compatible as the checkerboard jurisdiction on Indian reservations would apply the cigarette taxes to non Indian retailers on the reservation. The Indian is an exempt person under Wash.Rev.Code 82.24.080 and the Indian is preempted under Wash.Rev.Code 82.24.800. The consumer must pay the tax. *Id.* at 1089. The state courts cling to *State v. Comenout*, 173 Wash.2d 235, 267 P.3d 355 (2011) and refuse to recognize constitutional

1 federal preemption of the land. *Comenout* is also preempted by *Yakama*.

2         50. In *Comenout*, the State Supreme Court ignored the basic law that  
3 statehood ended the federal government's jurisdiction to punish non Indians  
4 "but authority in respect of crimes committed by or against Indians  
5 continued after the admission of the state as it was before." *U.S. v. Ramsey*,  
6 271 U.S. 467, 469, 46 S.Ct. 559, 70 L.Ed. 1039 (1926), a case holding that  
7 a restricted allotment was Indian Country.  
8

9         The Pierce County courts have erroneously applied the case of *State v.*  
10 *Comenout*, 173 Wash.2d 235, 267 P.3d 355 (Wash. 2011), holding the  
11 allotment was part of the state. *Id.* at 358. It concluded that the allotment  
12 was within state jurisdiction and the cigarette tax applied to the plaintiffs.  
13 Plaintiffs Robert R. Comenout Sr., Edward A. Comenout and Robert R.  
14 Comenout Jr. were parties in the *Comenout* case. All three were dismissed  
15 ex parte by the prosecution. See Exhibit C attached. The case was never  
16 allowed to go forward. Robert R. Comenout Jr.'s case dismissal admitted  
17 that he was charged without evidence. The case also was based on facts of  
18 Edward A. Comenout Jr.'s tribal membership in the Quinault Indian Nation.  
19 Since June 4, 2010, the date of death of Edward A. Comenout, no Quinault  
20 Indian has any ownership in the underlying land. Plaintiff Estate of Edward  
21 A. Comenout Jr. owns the majority interest in the buildings on the land. The  
22 Estate cannot qualify as a tribal member. The Plaintiffs are all enrolled  
23 Indians. Robert R. Comenout Sr. is a Tulalip tribal member. The Yakama  
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1 and Tulalip tribes have retroceded from state jurisdiction originally granted  
2 to the states by Public Law 280, 67 Stat. 588 (1953). The retrocession was  
3 accomplished under a 2012 state law, Wash.Rev.Code, engrossed House Bill  
4 2233, 2012 session laws of Washington c 48 § 3, effective June 7, 2012.  
5 Wash.Rev.Code §§ 37.12.160-180. The only meaningful limit is sexually  
6 violent predators, Wash.Rev.Code § 37.12.170. The *Comenout* case, 267 P.3d  
7 355, held that the Quinault Nation retroceded state jurisdiction but the then  
8 existing law excepted off-reservation allotments from the retrocession. The  
9 reasoning was completely flawed as the Quinault Tribe never had any  
10 authority over the Comenout allotment as Wash.Rev.Code § 37.12.060, the  
11 existing statute excepted restricted allotted lands from Public Law 280  
12 including any regulation of right of possession contrary to federal statute.  
13 The federal statute applying to the Puyallup allotment is 25 U.S.C. § 348,  
14 among others, the federal statute preempts any P.L. 280 jurisdiction even if  
15 Public Law 280 granted tax jurisdiction to the state, which it did not.  
16 *Comenout, supra* at 357, followed *State v. Cooper*, 928 P.2d 406, 408 (Wash.  
17 1996) that stated, “Washington assumed state jurisdiction over all Indian  
18 Country with respect to the eight categories of law enumerated in RCW  
19 37.12.010.” The later federal case of *Confederated Tribes of Chehalis*  
20 *Reservation v. Thurston County Bd. of Equalization*, 724 F.3d 1153, 1159 (9<sup>th</sup>  
21 Cir. 2013) held, 25 U.S.C. § 465, a statute that also applies to the Comenout  
22 allotment, preempts state taxation. Since the state dismissed the *Comenout*  
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1 case ex parte, it was a type of invited error as the Comenouts could not  
2 appeal the *Comenout* case and point out the erroneous State Supreme Court  
3 conclusion. The state law then applicable to assumption of civil jurisdiction,  
4 Wash.Rev.Code §§ 37.12.010-140 did not contain a detailed description of  
5 Indian Country, even though the state cigarette tax law does. See, e.g.  
6 Wash.Rev.Code § 82.24.010(6). The 2012 law adopts allotments as Indian  
7 Country. Wash.Rev.Code § 37.12.160(9)(d)(iii). All Indian allotments,  
8 including the Comenout allotment, are now defined. *State v. Comenout*, 267  
9 P.3d at 358, assumed that the state/Quinault Tribe compact linked the  
10 Quinault Tribe license requirement to the Comenout allotment. Comenout  
11 actually had a Quinault business license. *State v. Jim*, 273 P.3d 434, 440  
12 (Wash. 2012) distinguished *Comenout* on questionable reasoning holding that  
13 the Maryhill site was the same as part of four reservations, three of which  
14 were in the state of Oregon and Comenout was an individual allotment. The  
15 *Comenout* case is not valid precedent for the many reasons stated. Among  
16 the reasons is that the Washington State Constitution, art. 26, Second,  
17 confirmed that Indian land was exclusively retained to Congressional  
18 jurisdiction.

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23 51. The challenge to constitutionality of state laws regulating  
24 Plaintiffs' activities on federal allotments is not barred by what is known as  
25 the *Rooker-Feldman* doctrine. *Morrison v. Peterson*, 809 F.3d 1059, 1070 (9<sup>th</sup>  
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1 Cir. 2015); *Skinner v. Switzer*, 562 U.S. 521, 532, 131 S.Ct. 1289, 179  
2 L.Ed.2d 233 (2011).

3  
4 The *Comenout* decision erroneously failed to recognize that the property  
5 was trust property. Washington's Laws, Ch. 64.16, is titled "Alienation of  
6 land by Indians." Wash.Rev.Code § 64.20.030 provides that Indians can sell  
7 restricted lands without permission of the U.S. Government, "it being the  
8 intention of this section to remove from Indians residing in this state all  
9 existing disabilities relating to alienation of their real estate." This statute is  
10 directly opposite to 25 U.S.C. § 348 stating in part, "and if any conveyance  
11 shall be made of the lands set apart and allotted as herein provided, or any  
12 contract made touching the same, before the expiration of the time above  
13 mentioned, such contract shall be absolutely null and void." The allotment  
14 has never been relieved of the restrictions. 25 U.S.C. § 391 and 25 U.S.C. §  
15 465 allow individual allotments and rights to be "exempt from State and local  
16 taxation." 25 U.S.C. § 349 only allows removal of restrictions when the  
17 Indian owner is "competent to manage his own affairs." The majority interest  
18 owned by the Plaintiff Estate of Edward A. Comenout Jr. and also the  
19 percentage owned by Plaintiff Robert R. Comenout Sr. is free of local taxation  
20 pursuant to *Confederated Tribes of Chehalis Reservation v. Thurston County*  
21 *Board of Equalization*, 724 F.3d 1153, 1157 (9<sup>th</sup> Cir. 2013), a case rejecting  
22 state tax law and applying 25 U.S.C. § 465. Any state use tax relating to the  
23 buildings is also preempted. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145,  
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1 158, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973). *U.S. v. Boylan*, 256 F. 468, 485  
2 (D.C. N.Y. 1919) invalidated all state court proceedings ejecting Indians from  
3 their allotments. The creation of an allotment did not terminate the oversight  
4 of the United States. *Id.* at 493. “Their interest therein came by descent  
5 from the original proprietors of the soil, who owned and occupied it long  
6 before the discovery of America by Christopher Columbus.” *Id.* at 486. “A  
7 transfer of the allotments is not simply a violation of the proprietary rights  
8 of the Indian. It violates the governmental rights of the United States.” *Id.*  
9 at 487.

12 52. The *Comenout* case was heard on a Motion to Dismiss the  
13 criminal information in state court. *Id.* at 235. It was forwarded to the State  
14 Supreme Court by Division Two based only on the state information on  
15 Defendant’s Motion to Dismiss. The case was later dismissed ex parte by the  
16 state on its own Motion. Appendix C. The Supreme Court did not have a  
17 certified copy of the original restricted Deed or the defendant’s facts of the  
18 certificate of the BIA clearly indicating that the land was purchased for a  
19 home with Indian trust funds. The Court had only the prosecutions’  
20 allegations to review. *Yakama*, 658 F.3d at 1088 also states:

23 The language also indicates that if an Indian retailer ever found  
24 itself facing a State collection effort for the retailer’s non-  
25 payment of the tax, the retailer would be shielded from civil or  
26 criminal liability, except in the instance where the Indian  
27 retailer has failed to transmit the tax paid by the consumer and  
28 collected by the retailer.

1           *Washington v. Confederated Tribes of Colville Indian Reservation*, 447  
2 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980) noted that the Makah,  
3 Lummi and Colville Tribes imposed their own cigarette tax. *Id.* at 151. The  
4 state tax statute, Wash.Rev.Code § 82.24.260, is headed - “Person to pay or  
5 affix stamps-liability” and excepts an Indian Tribal Organization with respect  
6 to sales to enrolled members of the tribe. *Moe v. Confederated Salish and*  
7 *Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 480, 96 S.Ct. 1634,  
8 48 L.Ed.2d 96 (1976) excludes all sales “to Indians.” *Moe* also rejects all state  
9 tobacco licenses on reservation Indians. *Ibid.* at 480. 18 U.S.C. §  
10 2346(b)(1). Jurisdiction is also prevented by *Williams v. Lee*, 358 U.S. 217,  
11 79 S.Ct. 269, 3 L.Ed.2d 251 (1959). The *Comenout* decision, *supra* at 357,  
12 applied Wash.Rev.Code §§ 37.12.010 through 060 to find jurisdiction. The  
13 case not only overlooked the state constitution and the express exemption in  
14 28 U.S.C. § 1360(b) of any congressional delegation in Public Law 280 to  
15 allow state taxation. Public Law 280 only allowed partial jurisdiction to the  
16 state. The delegation did not allow delegation to tax Indians or Indian tribes.  
17 It also ignored its own case, *Makah Indian Tribe v. Clallam County*, 73  
18 Wash.2d 677, 440 P.2d 442 (1968), reviewed above reserving Indian tax  
19 issues to Congress. Further, *Comenout* missed Wash.Rev.Code § 37.12.060.  
20 That statute applies to lands held in trust that are subject to “restriction  
21 against alienation imposed by the United States.” The statute prohibits  
22 state jurisdiction to adjudicate “control, licensing or regulation” depriving any  
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1 Indian of their rights. Carole E. Goldberg, *Pub.L.280: The limits of State*  
2 *Jurisdiction over Reservation Indians*. 22 U.C.L.A. L.Rev. 535, 557 (1975)  
3 recognizes the distinction stating:  
4

5 The fourth alternative utilized by the states to minimize the  
6 financial hardship of PL-280—assumption of jurisdiction only  
7 over taxable non-trust lands within the reservations— is a  
8 unique feature of Washington’s 1963 law accepting PL-280  
9 jurisdiction. Since there is no pattern to the distribution of  
10 trust and non-trust lands on a reservation, Washington has  
11 created a jurisdictional labyrinth by mandating that on non-  
12 trust land state jurisdiction encompasses every subject matter,  
13 while on trust land, it applies only to certain enumerated  
14 subject matters unless the tribe ask for full state jurisdiction  
15 under PL-280. (Underlining added.)

16 The code revisor drafting Wash.Rev.Code § 43.06.455 (14)(b)(iii) also  
17 made the distinction. That is, that Washington cannot require an Indian  
18 selling cigarettes on his/her trust land to get a tribal tobacco license.  
19 *Comenout*, 267 P.3d at 358, also missed the difference between a Indian  
20 retailer not on trust land and an Indian lessee which would have changed the  
21 outcome.

22 **The *Comenout* case cannot be binding authority especially after**  
23 ***Yakama* and *Tohono O’odham*.**

24 53. The greatest interest that Edward A. Comenout Jr. ever had over  
25 the property was around 56%. He died June 4, 2010. Since then, no  
26 Quinault tribal member has any ownership in the allotment. The *Comenout*  
27 case, 267 P.3d at 358, reviews Quinault tribe retrocession to attempt to find  
28 state jurisdiction. The tribe could never bind the other non members, as  
they were not members of the tribe and did not live on the reservation. The

1 tribe never had any right to convey the allotment to the state. After June 4,  
2 2010, it could have no control of any kind over the property. The cigarette  
3 contract with the Quinault and the Quinault license or control under the  
4 compact cannot be even remotely precedential as the Quinault tribe cannot  
5 bind non member, non residents of the Quinault reservation. An Indian  
6 tribe, even if the Indian allotment owners consent, cannot exercise any  
7 jurisdiction beyond the borders of the reservation. *Miami Tribe Of Oklahoma*  
8 *v. U.S.*, 656 F.3d 1129, 1143 (10<sup>th</sup> Cir. 2011). At the last paragraph of the  
9 *Comenout* case, *supra* at 358, the State Supreme Court stated that  
10 Wash.Rev.Code § 82.24.110 and 500 criminalizes the possession and sale of  
11 cigarettes by Indians on the allotments. The case did not cite *Confederated*  
12 *Tribes and Bands of the Yakama Indian Nation v. Gregoire*, 658 F.3d 1078 (9<sup>th</sup>  
13 Cir. 2011), a case not involving any cigarette compact with any tribe.  
14 *Yakama* holds that an enrolled Indian cannot commit a cigarette tax crime,  
15 *id.* at 1088. The federal case controls. See Wash.Rev.Code § 82.24.900.

16 *Tohono O'odham Nation v. City of Glendale*, 804 F.3d 1292 (9<sup>th</sup> Cir.  
17 2015) also invalidates the *Comenout* decision as federal obstacle preemption  
18 invalidates Wash.Rev.Code § 37.12.020, the state statute relied on in  
19 *Comenout*, 267 P.3d at 358, for retrocession. The statute, according to the  
20 case, did not apply to land outside a reservation.

21 **Congress mandated that Public Law 280 did not apply**  
22 **to State tax matters.**

23 54. The *Comenout* case cites Public Law 280, including 28 U.S.C. §  
24  
25

1 1360, *id.* at 357, but fails to recognize that Public Law 280 specifically  
2 excludes state taxation of Indian property. The case then applies a non tax  
3 case, *State v. Cooper*, 130 Wash.2d 770 (1996). *Id.* at 239. The state statute  
4 could not apply to the allotment as federal law prevents state taxation. 25  
5 U.S.C. § 465; 25 U.S.C. § 349.

7 *Bryan v. Itasca County, Minnesota*, 426 U.S. 373, 390, 96 S.Ct. 2102,  
8 48 L.Ed.2d 710 (1976) (rejecting mobile home tax owned by an Indian living  
9 on trust land). The reference is to 28 U.S.C. § 1360 (a) and (b) that is part  
10 of P.L. 280. It states “Nothing in this section shall authorize. . .taxation or  
11 any personal property. . .belonging to any Indian. . .subject to a restriction  
12 on alienation.” Directly at issue in *Bryan* was state tax in Indian country.  
13 The review was of the state case (228 N.W.2d 249) that stated: “The  
14 language and structure of P.L. 280 strongly suggest that Congress intended  
15 to convey to the states the authority to enforce its revenue laws in Indian  
16 Country.” (228 N.W.2d at 254).” The U.S. Supreme Court reversed stating:  
17

18 [“Therefore, the state court held: ‘Public Law 280 is a clear  
19 grant of the power to tax.’ *Id.* at 406, 228 N.W.2d, at 256. We  
20 disagree. That conclusion foreclosed by the legislative history  
21 of Pub. L. 280 and the application of canons of construction  
22 applicable to congressional statutes claimed to terminate  
23 Indian immunities.”]

24 *Bryan*, 426 U.S. at 378. The Minnesota Supreme Court was reversed on  
25 federal preemption. Washington is an optional P.L. 280 state, meaning that  
26 it had to legislate to be included. P.L. 280 did not allow the eradication of  
27 tax immunity of Indians. All federal cases apply to Indians in Indian  
28

1 Country. There is no room for interpretation. The P.L. 280 permission  
2 cannot affect state tax immunity of Indians restricted as to sale,  
3 encumbrance and taxation “until these restrictions are cancelled by an  
4 unrestricted deed issued by the Secretary of Interior.” Wash.Rev.Code §  
5 37.12.060. Wash.Rev.Code § 37.12.010 conflicted with 25 U.S.C. § 465 in  
6 that it attempted to transfer the off-reservation land. The allotment could  
7 not be affected. The reason is that until the restrictions are lifted Congress  
8 has exclusive jurisdiction of the land. *Comenout, id.* at 358, relies on the  
9 statute for state jurisdiction. The decision assumes that the Quinault  
10 Nation had ownership or control of the land. The Quinault Nation never  
11 had control or ownership of the land as the reason for the allotment was to  
12 allow Edward A. Comenout Sr. to obtain a home off the Quinault  
13 reservation so he could blend into mainstream society off reservation.  
14 Edward A. Comenout Sr. died in 1929. Since that time, the land has been  
15 owned only about 56% by a Quinault tribal member and has never been  
16 governed by any Indian tribe.

17 55. An Indian in Indian country is subject to prosecution federally  
18 if the offense was committed in Indian country. 25 U.S.C. § 1301(4). 18  
19 U.S.C. § 1151(c) applies to Comenout’s allotment. A non member Indian  
20 must be living on another Indian reservation to be subject to prosecutions  
21 by the tribe on which he is living. See, e.g., *U.S. v. Lara*, 541 U.S. 193, 196,  
22 124 S.Ct. 1628, 158 L.Ed.2d 420 (2004). *Miami Tribe Of Oklahoma v. U.S.*,  
23  
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1 656 F.3d 1129 (10<sup>th</sup> Cir. 2011) holds that a tribe cannot rule beyond its  
2 borders. “Conversely, where no expression of congressional intent or  
3 purpose exists, a tribe cannot establish jurisdiction through its unilateral  
4 actions.” *Citizens Against Casino Gambling in Erie County v. Stevens*, 945  
5 F.Supp.2d 391, 401 (D.C.N.Y. 2013).  
6

7 Also of importance is that the federal law, 25 U.S.C. § 345, makes no  
8 distinction between criminal or civil law. It grants federal district court  
9 jurisdiction to an allottee, including Plaintiffs “may commence and  
10 prosecute. . .any action. . .in relation to their right thereto.” The cases cited  
11 herein prove only federal jurisdiction. See, e.g., *U.S. v. Stands*, 105 F.3d  
12 1565, 1571-72 (8<sup>th</sup> Cir. 1997). *State v. Jim*, 273 P.3d 434, 440 (Wash. 2012)  
13 assumes that the Comenout land was owned “for an individual Indian.”  
14 This assumption is wrong as it was owned by nine or ten Indians and one  
15 non Indian, and points out why a dismissed case by the prosecution is not  
16 precedent. Both tribes and individual Indians are treated the same on off-  
17 reservation allotments. 25 U.S.C. § 465. *Comenout, supra*, at 357, also  
18 applied Public Law 280 and followed *State v. Cooper*, 130 Wash.2d 770, 928  
19 P.2d 406 (1996), a child molestation case.  
20

21 The *Comenout* case also eviscerated the Washington Constitution  
22 Article 26, Second: “and the same shall be and remain subject to the  
23 disposition of the United States, and said Indian lands shall remain under  
24 the absolute jurisdiction and control of the congress of the United States.”  
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1 *Comenout* held that any off-reservation site is controlled by the State. The  
 2 holding clashes with the State Constitution. “. . .there is nothing in the  
 3 Constitution of the United States to require it, or to prevent a state from  
 4 allowing past action to be modified while a case remains in court.” *King v.*  
 5 *State of West Virginia*, 216 U.S. 92, 100, 30 S.Ct. 225, 54 L.Ed. 396 (1910).  
 6 25 U.S.C. § 349 states that allotments shall “be subject to the exclusive  
 7 jurisdiction of the United States.” 25 U.S.C. § 465 gives the Secretary of  
 8 Interior a right to establish public domain lands “within or without existing  
 9 reservations.” Anywhere, anytime. “Such lands or rights shall be exempt  
 10 from State and local taxation.” Rights include “surface rights.” Non  
 11 reservation Indians can own allotments. 25 U.S.C. §§ 334, 336, 337.  
 12 “Federal common law governs an action for trespass on Indian lands.” *U.S.*  
 13 *v. Milner*, 583 F.3d 1174, 1182 (9<sup>th</sup> Cir. 2009). Unlawful presence on an  
 14 allotment is a common law trespass giving jurisdiction under 25 U.S.C. §  
 15 345. See, e.g., *Nahno-Lopez v. Houser*, 625 F.3d 1279, 1282 (10<sup>th</sup> Cir.  
 16 2010). All statutes involving Indian allotments are still in force. 25 U.S.C.  
 17 § 335.

22 56. Collateral estoppel requires a final judgment on the merits.  
 23 *State v. Williams*, 132 Wash.2d 248, 254, 937 P.2d 1052 (1997). The party  
 24 asserting collateral estoppel bears the burden of proof. *Id.* at 254.

26 **The Cigarette Tax Law was passed after the allotment was issued. It**  
 27 **cannot apply to the allotment Indian owners or Indian workers.**

28 57. The time of passage of the law in *Tohono O’odham Nation v. City*

1 of Glendale, 804 F.3d 1292 (9<sup>th</sup> Cir. 2015) is relevant to Comenout's  
2 acquisition of the allotment in 1926. *Peoples v. Puget Sound's Best*  
3 *ChickenA, Inc.*, 185 Wash.App. 691, 345 P.3d 811 (Div. 2, 2015) applies.  
4 Laws passed after the land was taken as a federal enclave do not apply.  
5 The allotment is defined as a federal enclave. *Matheson v. Kinnear*, 393  
6 F.Supp. 1025, 1027 (D.C. Wash. 1974). The state tax law was enacted in  
7 1935, after the land was purchased. Exhibit A to this reply attaches the  
8 certified copy of the Deed filed in 1926. The state laws passed after 1926  
9 are not applicable to the allotment.  
10

11  
12 58. *C.I.R. v. Sunnen*, 333 U.S. 591, 68 S.Ct. 715, 92 L.Ed. 898  
13 (1948) “. . .a judicial declaration intervening between the two proceedings  
14 may so change the legal atmosphere to render the rule of collateral estoppel  
15 inapplicable.” *Id.* at 600. Many cases on preemption have been decided  
16 since the 2011 *Comenout* case.  
17

18 59. The State attempts to hold a non taxable Indian subject to state  
19 law of mere possession. *U.S. v. Brigman*, 874 F.Supp. 1125, 1132 (E.D.  
20 Wash. 1994) allows Indians to possess unstamped cigarettes. *Indian*  
21 *Country U.S.A.. Inc. v. State of Oklahoma ex rel. Oklahoma Tax Commission*,  
22 829 F.2d 967, 974 (10<sup>th</sup> Cir. 1987) has new vitality as the cigarette tax  
23 issues are preempted by the *Yakama* case cited above. The Oklahoma sales  
24 tax on bingo conducted on an allotment was preempted.  
25

26  
27 Co-Plaintiff Robert Reginald Comenout Sr. has lived on the property  
28

1 for many years. He inherited part of his interest in the property at least as  
2 early as 1987. He suffered debilitating strokes in 1991 and 2011. He is  
3 over 82 years old and confined to a wheelchair most of the time. He can  
4 only walk short distances with the aid of a cane or support of others. He  
5 cannot dress himself, use the bathroom or bathe without aid of others. He  
6 cannot care for himself. He is under medications and physically disabled.  
7 He lives on the property in the residential portion. He needs to stay on the  
8 property as it has been physically altered to accommodate wheelchair  
9 occupied disabled persons.  
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12 Co-Plaintiff Edward Amos Comenout III is approximately 24 years of  
13 age and lives on the property. He has no other place to live and is  
14 dependant on his grandfather, Robert Reginald Comenout Sr., for support,  
15 direction and advice. He has consistently and completely acknowledged  
16 that the Indian elder rule applies to the property. Since the death of his  
17 great uncle, Edward Amos Comenout Jr., he and other relatives have  
18 acknowledged that they are subservient to Robert Reginald Comenout Sr.  
19 as the ruling elder of the property.  
20  
21

22 Co-Plaintiff Robert Reginald Comenout Sr. has complied with the  
23 purpose of the allotment purchase. He is well liked by non Indians in the  
24 area, which is an important element to circumvent hostility to Indians due  
25 to Indian fishing rights condemned by non Indian sportsmen. He acts only  
26 to protect the property and its congressional purpose. He has been  
27  
28

1 ordained by Indian law to carry on the purpose envisioned by Congress and  
2 by Edward Amos Comenout Jr. Among the purposes is to prevent the  
3 reason for the Allotment Act, that is, to prevent the land from purchase by  
4 greedy non Indians.  
5

6 Non Indian nearby business and customers of Robert Reginald  
7 Comenout Sr. consider and treat him as an equal. The only disruptive  
8 forces are the Puyallup Tribe, the Quinault Nation and the state of  
9 Washington, who fear that existing law will create a lower tax base and  
10 deprive these governments of tax revenue they obtain from competitive  
11 cigarette sales. They have never offered the same remedy to Robert  
12 Reginald Comenout Sr. and other owners, i.e., a compact on cigarette sales.  
13 This remedy, however, would prevent government agencies, who since the  
14 early 1970's have raided the business, from distributing bonuses and other  
15 payments.  
16  
17

18 The city of Puyallup has halted the construction of an Indian Country  
19 sign and billboard contending that city and state sign regulations apply.  
20 The city and county maintain that they have jurisdiction to regulate the  
21 property. However, they will not respond to police calls.  
22

23 Despite trust allotment laws, the state continues to seize commercial  
24 cigarettes and prosecute Indian sellers. The state of Washington Liquor  
25 Board and State Department of Revenue refuse to recognize Plaintiff's state  
26 constitutional rights under Wash.Const. art. 26, Second, in which the state  
27  
28

1 agreed to: "Forever disclaim all right and title. . .to all lands. . .owned or  
2 held by any Indian." The fact and law that Public Law 280 did not allow  
3 state tax jurisdiction; that federal supremacy and preemption applies to  
4 lands defined in 18 U.S.C. § 1151(c) is ignored by state tax agencies. A  
5 declaratory judgment is also sought on state tax jurisdiction that differs  
6 from other state jurisdiction issues, since P.L. 280 did not grant tax  
7 jurisdiction. The state of Washington, in recent years, has passed laws to  
8 allow recreational use of cannabis. The public policy of Washington now is  
9 to allow the use of cannabis. It is no longer a criminal offense to smoke  
10 cannabis. Therefore, the laws are civil regulatory. This Complaint also  
11 seeks a ruling that the sale and use of cannabis by Plaintiffs on the  
12 allotment is allowable under case law and cannot be taxed by the state of  
13 Washington or local government. See *Arizona v. Tohono O'odham*, 818 F.3d  
14 549, 555 (9<sup>th</sup> Cir. 2016).

15  
16 The state of Washington contends that it has jurisdiction of the  
17 owners' activities on the site, including Co-Plaintiffs, despite the restricted  
18 status under 25 U.S.C. § 345 and other laws. The site is a federal  
19 instrumentality and free of state tax. See *Warren Trading Post Co. v. Arizona*  
20 *State Tax Commission*, 380 U.S. 685, 85 S.Ct. 1242, 14 L.Ed.2d 165 (1965)  
21 and *Oneida Tribe of Indians of Wis. v. Village of Hobart, Wis.*, 732 F.3d 837,  
22 839 (7<sup>th</sup> Cir. 2013). Wash.Rev.Code § 64.20.030, enacted in 1899, removing  
23 "all Indians residing in this state all disabilities relating to alienation of their  
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1 real estate.” This statute conflicts with 25 U.S.C. §§ 349, 465. The term  
2 “checkerboard” referred to herein divides criminal jurisdiction for crime  
3 committed in Indian country dependent upon whether crime committed in  
4 Indian country is a major crime (18 U.S.C. §§ 1152, 1153), or not, whether  
5 the accused an Indian or non Indian, whether the victim is an Indian or non  
6 Indian or whether the crime is a victimless crime. The state and type of  
7 crime can also be an issue as tax crimes are not within Public Law 280, 67  
8 Stat. 588, 18 U.S.C. § 1162, 28 U.S.C. § 1360. State civil jurisdiction  
9 depends on where the activity occurred, tribal jurisdiction, whether Indian  
10 or non Indian and whether the activity is preempted by treaty or federal law,  
11 and, if a non Indian, was there a “consensual relationship” with a tribe.  
12 See, e.g., *Montana v. U.S.*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493  
13 (1981). The state of Washington is a non mandatory Pub. L. 280 state and  
14 had to disclaim authority over Indian lands to enter the union.  
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#### 18 **FIRST CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF**

19 Plaintiffs repeat and reallege the allegations contained in paragraphs  
20 1 through 59 as though fully set out here.  
21

22 60.1. Plaintiffs seek a declaratory judgment that the allotment is  
23 defined under 18 U.S.C. § 1151(c). 60.2. That federal not state law applies  
24 to the Indian allotment owners and Indian activities on the allotment. 60.3.  
25 That all of the Defendants and each of them have no right to control,  
26 regulate or adjudicate the convenience store business that has been  
27  
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1 conducting business on the allotment when conducted by Plaintiffs or that  
2 will be conducted by the Plaintiffs, including Plaintiff Edward Amos  
3 Comenout III, in the future on the property. 60.4. That Defendants have  
4 no personal jurisdiction of Plaintiffs' activity on the property except for  
5 Indian-non Indian crime which has not occurred on the property. 60.5.  
6 Plaintiffs further seek a declaration that no jurisdiction exists by any  
7 Defendant and seeks a declaration and injunction against any further  
8 activity of the type Defendants have taken on the property, including the  
9 present or future action to be taken by judges of the state courts in their  
10 representative capacities. 60.6. Plaintiffs seek a ruling that state  
11 jurisdiction is prevented by exclusive federal control and jurisdiction of  
12 enrolled Indians, that the exclusive jurisdiction over the allotment is in the  
13 United States Congress.

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17 61. A declaration that the acts of Defendants violate the United  
18 States Constitution, the laws of the United States, creating allotments and  
19 allotment rights and other federal laws.

20  
21 62. A declaration that a ripe and justifiable controversy exists and  
22 Plaintiffs, by virtue of 25 U.S.C. § 345, 28 U.S.C. § 1353 and other laws,  
23 have standing and jurisdiction to assume their rights. As a result of the  
24 foregoing, Plaintiffs are entitled to declaratory and injunctive relief,  
25 temporary and permanent, against Defendants.

26  
27 63.1. Plaintiffs Robert Reginald Comenout Sr., Robert Reginald  
28

1 Comenout Jr., Marlene Comenout and Lee A. Comenout Sr. request a  
2 declaration that this Court declare that Wash.Rev.Code § 64.20.030 is  
3 invalid by federal laws, 25 U.S.C. §§ 348, 349 and the Supremacy clause,  
4 U.S. Const. art. 6, cl. 2 and Art. 1, § 8, cl. 3, Wash. Const. art. 26, cl. 2, by  
5 federal preemption, express, field, obstacle, conflict and preemption  
6 violating Congressional interests. That the state court actions in the  
7 prosecutions listed at pages 12 and 13 of this Complaint be dismissed for  
8 lack of jurisdiction. 63.2. That the Court find that no jurisdiction existed  
9 to issue a state court warrant for their arrests, that the property taken from  
10 them incident to arrest be returned. 63.3. That the Washington State  
11 cigarette excise tax discriminates in favor of military base concessionaires  
12 and against the Plaintiffs as Indian retailers. The difference in treatment is  
13 not rationally related to the purpose of the tax statutes. Therefore, the  
14 statutes are void. 63.4. That all Plaintiffs may possess commercial  
15 cigarettes on the property that do not have state of Washington tax stamps  
16 affixed to the packages. 63.5. That Plaintiffs do not have to collect or pay  
17 any state tax from allotment sales; that suitable injunctions issue to the  
18 Court of Appeals' judges now assigned the appeals to the cases be enjoined  
19 from further processing as there is no state jurisdiction. 63.6. All Plaintiffs  
20 request that all Defendants be permanently restrained from bringing any  
21 action in the future seeking to obtain or adjudicate cases that are based on  
22 state jurisdiction of enrolled Indian operation on the allotment. 63.7. All  
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1 Plaintiffs seek a declaration that federal law applies to the allotment not  
2 state law in the same way the state law is exempted from military base  
3 concessions in Pierce County, Washington are exempted. 63.8. That the  
4 state of Washington has no right to control or tax the buildings or the  
5 revenue generated by the buildings on the property now owned or controlled  
6 by the Estate of Edward Amos Comenout Jr. 63.9. The Estate also seeks  
7 an injunction ordering dismissal of the seizure in July of 2008, now in the  
8 Washington State Court of Appeals, No. 47883-8-11 and the return of the  
9 property or fair market value. 63.10. All parties move that the Court  
10 declare that commerce in industrial Hemp (*Cannabis sativa* L) with a  
11 concentration of not more than 0.3 percent of delta-9 tetrahydrocannabinol  
12 [THC] concentration and the commerce in marijuana now allowed in the  
13 state of Washington is legally allowed on the allotment when managed and  
14 operated by Plaintiffs Robert Reginald Comenout Sr. or Edward Amos  
15 Comenout III.

## 16 **SECOND CLAIM**

17 Plaintiffs repeat and reallege the allegations contained in paragraphs  
18 1 through 63 as though fully set out here.

19 64. Joshua M. Choate and Michael Pellicciotti are the Assistant  
20 Attorney Generals of the state of Washington that were assigned to  
21 prosecute Robert Reginald Comenout Sr., Robert Reginald Comenout Jr.,  
22 Marlene Comenout and Lee A. Comenout in the courts of Pierce County in  
23

1 July of 2015, and thereafter, for alleged violations of the Washington State  
2 cigarette tax law and related theft of state funds allegedly for state taxes  
3 collected but not remitted. The authority to assign Joshua Choate and  
4 Michael Pellicciotti was cited in the respective informations of "Pursuant to  
5 RCW 43.10.232." That statute at Wash.Rev.Code § 43.10.232(1)(a) only  
6 applies when the county prosecuting attorney has "jurisdiction in which the  
7 offense occurred." The county prosecutor has no jurisdiction to prosecute  
8 Indians in Indian Country. Indian Country includes the allotment, 18  
9 U.S.C. § 1151(c). State law licenses do not extend to Indian Country. *In the*  
10 *Matter of Robertson*, 4 NICS.App. 111 (1996). *State v. Klindt*, 782 P.2d 401  
11 (Okla. Cr. 1989), *Application of Carmen*, 48 Cal.2d 851, 313 P.2d 817 (Cal.  
12 1957), *U.S. v. Stands*, 105 F.3d 1565 (8<sup>th</sup> Cir. 1997), *Solem v. Bartlett*, 465  
13 U.S. 463, 104 S.Ct. 1161, 79 L.Ed.2d 443 (1984), *Cravatt v. State*, 825 P.2d  
14 277 (Okla. Cr. 1992), *Dickson v. Carmen*, 270 F.2d 809 (9<sup>th</sup> Cir. 1959),  
15 *Wesley v. Schneckloth*, 55 Wash.2d 90, 346 P.2d 658 (Wash. 1959), *U.S. v.*  
16 *Sands*, 968 F.2d 1058 (10<sup>th</sup> Cir. 1992), *Magnan v. Trammell*, 719 F.3d 1159  
17 (10<sup>th</sup> Cir. 2013) and other cases all hold that the respective states involved  
18 cannot charge crimes against Indians on Indian allotments. The ABA  
19 Criminal Justice Section General Standard 3-1.2, functions of the  
20 prosecutor, states at (a), the office of prosecutor is charged with  
21 responsibility for prosecuting in its jurisdiction. No authority exists to  
22 obtain search warrants from a state court judge to search Indians on their  
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1 property on an allotment. *Ross v. Neff*, 905 F.2d 1349 (10<sup>th</sup> Cir. 1990);  
2 *United States v. Peltier*, 344 F.Supp.2d 539, 546 ( E.D. Mich. 2004). The  
3 state criminal statute, Wash.Rev.Code § 9.12.010, may apply. If the  
4 investigation and suit is unlicensed, the action is unenforceable. See e.g.  
5 *Del Webb Communities, Inc. v. Partington*, 652 F.3d 1145, 1152 (9<sup>th</sup> Cir.  
6 2011). Therefore, all activities of Joshua Choate and Michael Pellicciotti  
7 involving the affected Plaintiffs are void and pleadings prepared by them  
8 and each be dismissed for want of representative authority to proceed to  
9 prosecute on activity within an Indian allotment.

### 12 **THIRD CLAIM**

13 Plaintiffs repeat and reallege the allegations contained in paragraphs  
14 1 through 64 as though fully set out here.

15 That the Court enjoin the Defendants or any one of them from any  
16 and all actions in the future in which the Court will determine to be  
17 preempted by federal law or enjoin the Defendants or any one of them or  
18 their employees or agents in concert with Defendants from enforcing the  
19 laws that the Court rules inapplicable to Plaintiffs.

20 Plaintiffs also seek their reasonable attorneys fees, costs and  
21 disbursements from the Defendants.

22 DATED this 10<sup>th</sup> day of June, 2016.

23 s/ Robert E. Kovacevich

24 ROBERT E. KOVACEVICH, #2723

25 Attorney for Plaintiffs

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s/ Aaron L. Lowe

AARON L. LOWE, #15120  
Attorney for Plaintiffs

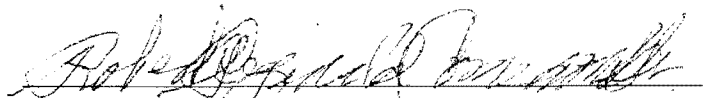
s/ Randal B. Brown

RANDAL B. BROWN, #24181  
Attorney for Plaintiffs

**VERIFICATION**

Co-Plaintiff, Robert Reginald Comenout Sr., certifies under the penalties of perjury under the laws of the United States that he has read the foregoing Complaint and that it is true and correct except for paragraphs alleged upon information and belief which he believes are true and correct.

DATED this 7<sup>th</sup> day of June, 2016.

  
ROBERT REGINALD COMENOUT, SR.

1 Co-Plaintiff, Edward Amos Comenout III, certifies under the penalties  
2 of perjury under the laws of the United States that he has read the foregoing  
3 Complaint and that it is true and correct except for paragraphs alleged  
4 upon information and belief which he believes are true and correct.  
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6 DATED this 7<sup>th</sup> day of June, 2016.

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9 EDWARD AMOS COMENOUT III  
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1 Co-Plaintiff, Robert Reginald Comenout Jr., certifies under the  
2 penalties of perjury under the laws of the United States that he has read the  
3 foregoing Complaint and that it is true and correct except for paragraphs  
4 alleged upon information and belief which he believes are true and correct.  
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6 DATED this 7<sup>th</sup> day of June, 2016.

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9 ROBERT REGINALD COMENOUT JR.  
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1 Co-Plaintiff, Marlene Comenout, certifies under the penalties of  
2 perjury under the laws of the United States that he has read the foregoing  
3 Complaint and that it is true and correct except for paragraphs alleged  
4 upon information and belief which he believes are true and correct.  
5

6 DATED this 7<sup>th</sup> day of June, 2016.

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9 MARLENE COMENOUT